



## SECTION 7

## VCPRP REGULATIONS

## 28-70-3

## KANSAS DEPT. OF HEALTH AND ENVIRONMENT

(c) Reports are not required for the following cancers:

(1) Squamous cell carcinoma of the skin, unless located on a lip of the face or in the genital area, or unless spread beyond local tissues at diagnosis;

(2) basal cell carcinoma of the skin, unless located on a lip of the face or in the genital areas, or unless spread beyond local tissues at diagnosis; and

(3) carcinoma in situ of the uterine cervix.

(d) Reports from health care institutions shall include the following information, if available:

(1) Patient demographics;

(2) diagnostic results and treatment;

(3) outcome, recurrence, and date of death, if applicable;

(4) cancer site, histology, and stage;

(5) confidential patient identifiers, including the following:

(A) Full name;

(B) alias;

(C) maiden name;

(D) name of spouse;

(E) medical record number;

(F) social security number;

(G) street address at the time of diagnosis;

(H) current street address; and

(I) current telephone number;

(6) confidential provider information, including names and address of health care institutions and individual providers of health care;

(7) history of abortion; and

(8) other variables identified as necessary by the registry director and approved by the secretary.

(e) Reports to the registry shall be in one of the following formats:

(1) American standard code for information interchange (ASCII) file in the North American association of central cancer registries (NAACCR) format;

(2) paper forms provided by the registry;

(3) a copy of the pathology laboratory report, if received from a pathology laboratory; or

(4) other formats identified as acceptable by the registry director.

(f) Any data transferred to the registry shall be secure and confidential.

(1) All paper data transferred to the registry shall be sealed in an envelope marked "CONFIDENTIAL" and addressed to the registry director.

(2) Electronic data transfer may be made by one of the following methods:

(A) Diskette mailed in a sealed envelope marked "CONFIDENTIAL" and addressed to the registry director; or

(B) electronic transmission, if encrypted, according to prior instructions from the registry director. (Authorized by and implementing L. 1997, Ch. 110, Sec. 2; effective Feb. 27, 1998.)

**28-70-3. Use and access.** (a) For purposes of ascertaining accuracy and completeness of cancer data, a person representing the registry may review the medical diagnosis of each person cared for by any individual provider or any health care institution, and may review the medical records of any person with cancer. Review shall be by prearrangement with the individual provider or health care institution.

(b) Any person who requests access to confidential registry data shall submit the request to a review panel, as established by L. 1997, ch. 110, Sec. 6, and amendments thereto. When the requestor demonstrates to the satisfaction of the review panel that the request complies with one or more of the conditions as defined in L. 1997, Ch. 110, Sec. 5, subsections (c) to (f), and amendments thereto, confidential data may be released by the panel. (Authorized by L. 1997, ch. 110, Sec. 2; implementing L. 1997, Ch. 110, Sec. 4 and Sec. 5; effective Feb. 27, 1998.)

#### Article 71.—VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

**28-71-1. Definitions.** For the purposes of these regulations, the following definitions shall apply. (a) "Adjacent property" means property that is impacted by contamination from an off-property source or property that is contiguous to a contaminated property.

(b) "Anthropogenic levels" means concentrations of chemicals or substances that are present in the environment due to human activity.

(c) "Class one contamination (Class I)" means that suspected or confirmed contamination is determined to exist on the eligible property, and the eligible property is not a source of contamination or is located adjacent to a property with a known source of contamination.

(d) "Class two contamination (Class II)" means that suspected or confirmed soil contamination is determined to exist on the eligible property, there



## SECTION 7

## VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-2

is no known or suspected soil contamination emanating off the eligible property, and there is no known or suspected ground-water contamination.

(e) "Class three contamination (Class III)" means that suspected or confirmed soil or ground-water contamination, or both, is determined to exist on the eligible property, and there is no known or suspected soil or groundwater contamination that has migrated off the eligible property.

(f) "Class four contamination (Class IV)" means that suspected or confirmed soil or ground-water contamination, or both, is suspected or is determined to exist on and off the eligible property.

(g) "Days" means calendar days unless otherwise specified. Documents due on the weekend or a holiday shall be submitted on the first working day after the weekend or holiday.

(h) "Enforcement action" means an administrative or judicial claim made by a governmental agency pursuant to state, federal, or common law against the property described in the application, which enforcement action is based upon the contaminants sought to be cleaned up under this program.

(i) "Environmental site assessment" means an investigation of a property, conducted by a qualified environmental professional, that identifies and defines recognized environmental conditions at the property.

(j) "Hazard index value" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

(k) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period to a reference dose for that substance derived from a similar exposure period.

(l) "Institutional control" means a legal mechanism that limits access to or use of property, or warns of a hazard, the purpose of which is to ensure the protection of human health and the environment.

(m) "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water that is delivered to any user of a public water system as described in K.A.R. 28-15-13, subsections (b) and (c).

(n) "Naturally occurring levels" means ambient concentrations of chemicals or substances present in the environment that are typical of background levels near the eligible property when not affected by the identified contamination source.

(o) "Nonresidential property" means any property that does not exclusively meet the definition of residential property.

(p) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state agency, unit of local government, school district, federal agency, tribal entity, interstate body, or other legal entity.

(q) "Potable water" is as defined in K.A.R. 28-16-28b, paragraph (b)(32).

(r) "Qualified environmental professional" means an individual who demonstrates to the satisfaction of the department that the individual, through academic training, occupational experience, reputation, or other credentials, can objectively conduct one or more aspects of an environmental site assessment.

(s) "Remedial action" means those actions taken to address the effects of a release of a contaminant, so that it does not cause a significant risk to present or future public health or welfare, or to the environment.

(t) "Remediation" means the act of implementing, operating, and maintaining a remedial action.

(u) "Residential property" means any property currently used or proposed for use as one of the following:

(1) A residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or

(2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

(v) "Voluntary cleanup and property redevelopment program (VCPRP)" means the implementation of the voluntary cleanup and property redevelopment act, as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, by the department.

(w) "Voluntary party" means an applicant whose property is determined to be eligible for the voluntary cleanup and property redevelopment program. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 through 65-34,172; effective June 26, 1998.)

**28-71-2. Applicant.** An applicant shall include a person who has title, control, or access to the property and is one of the following:

(a) A person who owns property;



## SECTION 7

## 28-71-3

## KANSAS DEPT. OF HEALTH AND ENVIRONMENT

(b) a person who operates a facility located on the property;

(c) a person who previously owned, operated, or otherwise controlled activities on the property;

(d) a prospective owner of property;

(e) a prospective operator of a facility located on property;

(f) a person or generator of hazardous or solid waste who by contract, agreement, or otherwise, directly or indirectly, arranged for the disposal of contaminants at the property;

(g) a person who legally controls the property; or

(h) any unit of government that acquired title or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

**28-71-3. Eligibility determination.** (a) The property described in the application shall contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source.

(b) Properties that may be eligible for application to the voluntary cleanup and property redevelopment program include the following:

(1) Properties that have been assessed by the United States environmental protection agency, its contractors and agents, and the department, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and these regulations;

(2) contaminated properties that are currently under an existing department order or agreement, upon completion of the actions required by the department order or agreement, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and the determination of completion of the actions required by the order or agreement shall be made by the department;

(3) portions of a larger property that have or require a resource conservation and recovery act (RCRA) permit, but these portions do not require a permit in accordance with RCRA, which contains a corrective action component, as determined by the department, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto;

(4) portions of a larger property that includes

oil and gas activities regulated by the state corporation commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; and

(5) contaminated properties that are not statutorily excluded. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

**28-71-4. Application process.** (a) Each applicant shall submit to the department a complete application consisting of the following:

(1) An application form, provided by the department;

(2) a nonrefundable application fee of \$200.00; and

(3) all documentation that supports the application, including environmental assessments, investigation reports, or both.

(b) Determination of whether or not the property defined in the application is eligible for participation in the program shall be made by the department, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. The applicant shall be notified by the department in writing of the determination, not more than 60 days after the department receives a complete application or reapplication.

(c) In the event that the initial application is determined by the department to be incomplete, a written notice stating why the application is incomplete shall be returned to the applicant by the department. The applicant shall submit a revised application package to address the concerns of the department.

(d) In the event the department determines that the revised application package is still incomplete, written notice shall be provided by the department to the applicant, who shall submit a second application fee of \$200.00 and a revised application package. (Authorized by and implementing K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 and 65-34,165; effective June 26, 1998.)

**28-71-5. Classification determination.**

(a) An initial classification of contamination for eligible properties shall be determined by the department.

(b) For the purposes of this regulation, properties shall be placed into one of four contamination classes, as defined in K.A.R. 28-71-1.





(c) The department's classification determination shall be conveyed to the voluntary party with written notification of eligibility.

(d) The contamination classification of an eligible property shall be determined by the department based on the following criteria:

(1) The application and associated documentation that supports the voluntary party's application;

(2) review of available technical bulletins and scientific documents describing the geology and geohydrology of the property and surrounding area; and

(3) scientific information relating to the toxicity, mobility, persistence, and other characteristics of the contaminants suspected or identified at a property.

(e) For the purposes of selecting an appropriate level of work necessary to achieve the objectives as defined in K.A.R. 28-71-9, determination of which contamination classification an eligible property falls into shall be made by the department.

(f) Throughout the time the eligible property is participating in the program, the contamination classification of an eligible property may be adjusted by the department to a lower contamination classification or a higher contamination classification, depending on additional information obtained. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165 and 65-34,166; effective June 26, 1998.)

**28-71-6. Voluntary agreement.** (a) Upon departmental approval of the application for the voluntary cleanup and property redevelopment program, the voluntary party shall enter into a voluntary agreement with the department. The voluntary agreement shall be developed by the department and submitted to the voluntary party for signature. The voluntary agreement shall set forth all of the terms and conditions for implementation of the work anticipated in the program.

(b) Oversight, management, and review activities pertaining to the property shall not be commenced by the department until the voluntary agreement is signed by both the department and the voluntary party.

(c) The voluntary agreement shall require the voluntary party to deposit with the department an initial amount, not to exceed \$5,000.

(d) The voluntary agreement shall require the voluntary party to provide the department access

to the property at all reasonable times, upon reasonable notice to the voluntary party during all the activities conducted under K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

**28-71-7. Initial deposit and reimbursement.** (a) The initial deposit made by the voluntary party, based on the contamination classification of the property, shall be one of the following amounts.

(1) Class I contamination shall not exceed \$1,000, based upon actual billing by the department.

(2) Class II contamination shall be \$3,000.

(3) Class III contamination shall be \$4,000.

(4) Class IV contamination shall be \$5,000.

(b) Oversight shall be performed by the department or its consultants or contractors. This oversight shall include the following:

(1) The review of documents, studies, and test results;

(2) any necessary administrative decision making by the department;

(3) collection of split samples, laboratory analysis, and sampling supplies;

(4) travel;

(5) per diem;

(6) verification activities; and

(7) associated indirect costs.

(c) The purpose of oversight of a voluntary party's performance by the department shall be to assure that the work is consistent with, and meets the requirements of, K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; applicable guidance, policies and procedures; and these regulations. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

**28-71-8. Environmental assessments.** (a) Environmental assessments as defined in these regulations and prepared by a qualified environmental professional shall be accepted by the department.

(b) An environmental assessment shall include the following information:

(1) The legal description of the site and a map identifying the location, boundaries, and size of the property;

(2) the physical characteristics of the site and areas contiguous to the site, including the location



## SECTION 7

## 28-71-9

## KANSAS DEPT. OF HEALTH AND ENVIRONMENT

of any surface water bodies and groundwater aquifers;

(3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;

(4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;

(5) the present and proposed uses of the property;

(6) information concerning the nature and extent of any contamination;

(7) information on releases of contaminants that have occurred at the site, including any environmental impact on areas in the vicinity of the property;

(8) any sampling results or other data that characterizes the soil, groundwater, or surface water on the property; and

(9) a description of the human and environmental exposures to contamination at the property, based upon the property's current use and any future use proposed by the property owner as approved by the local zoning authority. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165, 65-34,166, and 65-34,170; effective June 26, 1998.)

**28-71-9. Voluntary cleanup work plans and reports.** (a) Upon signature of the voluntary agreement by the voluntary party and the department, each environmental investigation report, assessment report, or both, submitted by the voluntary party shall be reviewed by the department. Determination of whether or not the investigation, assessment, or both, meet all the following objectives shall be made by the department.

(1) Sources for contaminants have been adequately identified and investigated.

(2) The vertical and horizontal extent of contaminants has been determined.

(3) Human health and environmental receptors have been identified.

(4) Potential risks and impacts to receptors have been evaluated.

(5) Quality assurance and quality control have been maintained.

(b) Based on the reports submitted by the voluntary party, a determination as to any required actions shall be made by the department.

(c) Determination that further investigation is

necessary to meet the objectives as defined in K.A.R. 28-71-9, subsection (a) may be made by the department. If this determination is made, the voluntary party shall submit to the department for review and approval a work plan for investigation. The work plan shall be based on a scope of work provided by the department. The work plan shall be reviewed by the department, and written comments for revisions or approval shall be provided by the department. After approval of the work plan by the department, the following actions shall occur.

(1) The voluntary party shall implement the department-approved work plan for investigation.

(2) The voluntary party shall document and submit the results of the investigation in a report, and the report shall be submitted to the department for review.

(3) The report shall be reviewed by the department, and written comments for revision or approval shall be provided by the department.

(4) A determination as to any further required actions based on the results of the approved investigation report shall be made by the department.

(d) If it is determined that remediation is necessary to address, mitigate, or both, the risks posed by the property, the voluntary party shall submit to the department for review and approval a proposal for remediation. The proposal for remediation shall be based on a scope of work provided by the department. The proposal for remediation shall meet the following objectives:

(1) Be protective of human health and the environment for documented present and future land uses;

(2) meet applicable state standards and guidelines or the results of a risk analysis approved by the department;

(3) evaluate remedial alternatives that are proven reliable and are economically and technically feasible by completing the following activities:

(A) Comparing a minimum of two alternatives, not including the "no action" alternative;

(B) documenting the ability of each remedial alternative to attain a degree of cleanup and control of contaminants established by the department; and

(4) provide a description and evaluation of the voluntary party's proposed remedial alternative.

(e) The proposal for remediation shall be reviewed by the department, and written comments



for either revision or approval shall be provided by the department within 45 days of submittal, unless the department extends the time for review to a date certain.

(f) If the department approves the proposal for remediation, then a cleanup plan shall be submitted by the applicant. The cleanup plan shall include the following:

(1) A description of all tasks necessary to implement the preferred remedial alternative;

(2) preliminary or final design plans and specifications of the preferred remedial alternative;

(3) a description of all necessary easements and permits required for implementation of the cleanup;

(4) an implementation schedule;

(5) a plan to monitor the effectiveness of the cleanup during implementation; and

(6) a verification plan to document that cleanup objectives have been achieved.

(g) The cleanup plan shall be reviewed by the department, and written comments for either revision or acceptance shall be provided by the department within 30 days of submittal, unless the department extends the time for review to a date certain. If the department accepts the cleanup plan, a notice of the department's determination shall be published by the department, in accordance with K.A.R. 28-71-12.

(h) The cleanup plan shall be approved by the department if the plan is publicly accepted and if the plan attains a degree of cleanup and control of contaminants that are protective of human health and the environment.

(i) If the cleanup plan is not approved by the department, the voluntary party shall be provided with the reasons for denial, in writing, by the department.

(j) Upon receipt of written assurance that the cleanup plan has been completed, a verification sampling program, approved by the department, shall be conducted by the department and the voluntary party, to confirm that the property has been addressed as described in the cleanup plan. Conducting verification activities, allowing the voluntary party to conduct these activities, or requesting that both the department and voluntary party collectively conduct these activities may be selected by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,166, 65-34,167, and 65-34,168; effective June 26, 1998.)

**28-71-10. "No further action" determinations.** (a) For the purposes of this regulation, the term "no further action" determination means that the department has determined, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, that no further action is necessary at the property.

(b) The "no further action" determination by the department shall be made on properties where either of the following applies.

(1) Contamination was detected during the environmental assessment, department-approved investigation, or both, but contamination levels present no significant risk to human health and the environment, and those levels are less than applicable federal or state standards.

(2) The property has been remediated, as approved by the department, in a cleanup plan and confirmed with verification sampling as defined in K.A.R. 28-71-9.

(c) "No further action" determinations shall contain the appropriate disclaimers and limitations for the specific circumstances at the property.

(d) A "no further action" determination may be issued by the department with the following conditional terms:

(1) To allow for long-term monitoring of contamination; or

(2) to provide for further action in the event that department-approved cleanup levels are exceeded at property boundaries; or

(3) both paragraphs (d)(1) and (d)(2).

(e) A "no further action" determination may be issued by the department to properties when no contamination is indicated, based on a department-approved application, environmental assessment, or investigation reports submitted by the voluntary party. The environmental assessment or investigation shall document that the past and current use of the property has not contributed to contamination of soils, surface water or groundwater.

(f) A "no further action" determination may be issued by the department to contaminated, adjacent properties if the property that is the source of the contamination has applied and been accepted into the voluntary cleanup and property redevelopment program or if the property is being addressed by the department or the United States environmental protection agency through another program. The following requirements shall be





## SECTION 7

28-71-11

KANSAS DEPT. OF HEALTH AND ENVIRONMENT

met for those properties qualifying for a “no further action” determination under this subsection.

(1) The owner or operator, or both, of the adjacent property shall submit a complete application to the department, including environmental assessments and investigations.

(2) Determination that the contamination on the subject property resulted from an off-property source shall be made by the department.

(3) The department determines that there is no on-site source of contamination, including soil contamination.

(4) The department determines that the likely source of contamination exists nearby and its location may allow contamination to migrate onto the subject property.

(5) The owner or operator, or both, of the adjacent property documents that the past and current use of the property would not have contributed to the contamination of soils, surface water or groundwater.

(6) The owner or operator, or both, of the adjacent property agrees to fully cooperate and allow reasonable access for the investigation and cleanup of the contamination for the source property. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,169; effective June 26, 1998.)

**28-71-11. Remedial standards and remedial actions.** (a) All remedial alternatives performed by the voluntary party and approved by the department shall attain a degree of cleanup, control, or both, of contaminants that ensures protection of human health and the environment.

(b) All cost-effective remedial actions to restore the environment to conditions before its altered state, including innovative technologies and natural processes, shall be considered by the department if the protection of human health and the environment is maintained, the future degradation of the natural source is minimized, and the movement of contaminants is controlled.

(c) Responsibility for reviewing and approving the approach and final selection of cleanup levels shall rest with the department. The voluntary party may select any one of the following three approaches to determine cleanup levels for the property:

(1) Department-approved methods to determine background levels;

(2) department-established risk-based levels; or

(3) a site-specific, risk-based analysis conducted by the voluntary party or the department, based on department-approved formulas, exposure parameters, and department-approved land use scenarios.

(d) The selection of cleanup levels shall be based on the present and proposed future uses of the property and surrounding properties. Land use shall include two general categories: residential and nonresidential.

(e) Multiple media, exposure pathways, and contaminants shall be taken into account during the determination of cleanup levels.

(f) Existing and applicable federal or state standards shall be considered by the department during the determination of cleanup levels.

(g) Institutional controls that restrict the use of a property may be required by the department to ensure continued protection of human health and the environment.

(1) Institutional controls for the property shall not be proposed as a substitute for evaluating remedial actions that would otherwise be technically and economically practicable.

(2) Institutional controls for the property that are approved by the department shall be considered as remedial actions.

(3) Institutional controls for the property shall be described in a restrictive covenant approved by the department, executed by the property owner, and recorded with the register of deeds for the county in which the property is located. These restrictive covenants shall remain in effective and be binding on the owner's successors and assignees until approved otherwise by the department in writing.

(h) Soil cleanup levels and the depths to which the cleanup levels shall apply shall be based on human exposure, the present and proposed uses of the property, the depth of the contamination, and the potential impact to groundwater, surface water, or both, and any other risks posed by the soil contamination to human health and environment. One of the following approaches to soil cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that naturally occurring levels of an individual contaminant in the soil exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of a contaminant in soil exceed the cancer risk level of



$1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then a  $1 \times 10^{-5}$ , one in 100,000 cancer risk level, or a level corresponding to a hazard index value equal to 1.0 may be used as the cleanup levels.

(3) A property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value equal to 1.0.

(i) Property-specific cleanup levels shall be determined by the department for contaminants for which there is insufficient toxicological evidence to support a regulatory standard for risk-based cleanup levels or for nontoxic contaminants for which cleanup is required as a result of other undesirable characteristics of those contaminants. These levels shall be based on the following:

(1) The ability of the impacted soil to support vegetation representative of unimpacted properties in the vicinity of the eligible property; and

(2) the potential of the contaminant to impact and degrade groundwater, surface water, or both, through infiltration or runoff.

(j) When there are multiple contaminants in the soil, the cleanup level of each contaminant shall not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value of 1.0.

(k) The department shall approve soil cleanup levels to insure that migration of contaminants in the soil shall not cause the cleanup levels established for groundwater, surface water, or both, to be exceeded.

(l) Groundwater cleanup levels shall be based on the most beneficial use of the groundwater considering present and proposed future uses. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the voluntary party and approved by the department. The most beneficial use of the groundwater shall be determined by the department based on available existing documentation, as well as documentation provided by the voluntary party.

(m) Groundwater potentially or actually used as a potable water source shall require maximum protection in determining cleanup levels.

(n) The department shall approve cleanup levels that prevent additional degradation of the groundwater caused by contaminant migration and that encourage remedial actions to restore

contaminated groundwater to the groundwater's most beneficial use.

(o) One or a combination of the following approaches to groundwater cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that natural occurring levels of an individual contaminant in groundwater exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of an individual contaminant in groundwater exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the maximum contaminant levels (MCLs) established by the federal government or a cancer risk level of  $1 \times 10^{-5}$ , one in 100,000, or a level corresponding to a hazard index value equal to 1.0 shall be the cleanup level.

(3) In the event that the chemical-specific maximum contaminant levels (MCLs) are not applicable, a property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value equal to 1.0.

(p) When the need for cleanup of a contaminant may be predicated on characteristics of that contaminant other than toxicity, including the contribution of an undesirable taste or odor, or both, the site-specific cleanup level as determined by the department or secondary MCLs shall be used as cleanup levels for contaminants for which insufficient toxicological evidence has been gathered to support a regulatory standard for risk-based cleanup levels or nontoxic contaminants. These levels shall be based on the aesthetic quality and usability of the groundwater, surface water, or both, for the present and proposed future use.

(q) When there are multiple contaminants in the groundwater, the cleanup level of each contaminant shall be such that the cumulative risks posed by the contaminants shall not exceed a cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value of 1.0.

(r) Surface water cleanup levels shall meet the Kansas surface water quality standards, as defined in K.A.R. 28-16-28b, et seq. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,167 and 65-34,168; effective June 26, 1998.)





## SECTION 7

## 28-71-12

## KANSAS DEPT. OF HEALTH AND ENVIRONMENT

**28-71-12. Public notification and participation.** (a) When a cleanup plan has been accepted by the department, and after consultation with the applicant, a notice of the department's acceptance shall be published by the department in a local newspaper of general circulation in the area affected. Notice shall be provided by one or more of the following methods:

- (1) Display advertisement;
- (2) legal notice; or
- (3) published notice with direct notice to any other appropriate entities, including appropriate units of local government.

(b) The cleanup plan shall be made available by the department to the public upon request.

(c) All public notices shall indicate the public comment period for the cleanup plan. The comment period shall extend no fewer than 15 days from the date of posting the notice.

(d) The public shall have the opportunity during the public comment period to submit to the department written comments regarding the cleanup plan. Written response shall be made by the department to those written comments from the public that directly concern the cleanup plan.

(e) Following the 15-day public comment period, a public information meeting may be held by the department if, in the department's judgment, the public comments on the voluntary cleanup plan submitted warrant a meeting or the voluntary party requests a meeting.

(f) The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the department and the voluntary party or designated representative, or both.

(g) A notice to the city, the county, or both, of the public information meeting shall be provided by the department.

(h) Upon completion of the public notification and participation process, a determination to approve or disapprove the cleanup plan shall be made by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,168; effective June 26, 1998.)

**Article 72.—RESIDENTIAL CHILDHOOD  
LEAD POISONING PREVENTION  
PROGRAM**

**28-72-1. Definitions.** In addition to the definitions contained in K.S.A. 65-1,201, and

amendments thereto, the following definitions shall apply to the residential childhood lead poisoning prevention act.

(a) "Accreditation" means approval by KDHE of a training provider for a training course to train individuals for lead-based paint activities.

(b) "Accredited course" means a course that has been approved by the department for the training of lead professionals.

(c) "Act" means the residential childhood lead poisoning prevention act, and amendments thereto.

(d) "Adequate quality control" means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control shall also include provisions for representative sampling.

(e) "Audit" means the monitoring by KDHE of a training provider for a training course to ensure compliance with the act and this article.

(f) "Certified elevated blood lead (EBL) level inspector" and "EBL inspector" mean a person who meets the requirements of K.A.R. 28-72-6 and who is certified by the secretary.

(g) "Certified lead abatement supervisor" and "lead abatement supervisor" mean an individual who is trained by an accredited training program, as defined in this act, and certified by the secretary under K.A.R. 28-72-8 to supervise workers, to conduct lead abatement activities, and to prepare occupant protection plans and abatement reports.

(h) "Certified lead abatement worker" and "lead abatement worker" mean a person who meets the requirements of K.A.R. 28-72-7 and who is certified by the secretary.

(i) "Certified lead inspector" and "lead inspector" mean a person who meets the requirements of K.A.R. 28-72-5 and who is certified by the secretary. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(j) "Certified lead professional" means a person who is certified by the secretary as a lead inspector, elevated blood lead (EBL) level inspector, lead abatement supervisor, lead abatement worker, project designer, or risk assessor.

(k) "Certified project designer" and "project designer" mean a person who meets the requirements of K.A.R. 28-72-9 and who has been certified by the secretary.

(l) "Certified risk assessor" and "risk assessor"